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CITY OF CHARLOTTESVILLE *v.* JONES.

Nov. 14, 1918.

[97 S. E. 316.]

1. **Bridges (§ 37*)—Duty to Repair—Cities.**—It is the duty of the city, which maintains a bridge with a footway for pedestrians, to use reasonable care to keep the bridge in good and sufficient repair to render it reasonably safe for all persons exercising ordinary care in passing over it.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 628.]

2. **Bridges (§ 41 (2)*)—Absence of Guard Rail—Liability of City.**—Where the city allowed a bridge with a footway to go without a handrail for three weeks prior to plaintiff's injury, a finding of negligent breach of duty was warranted.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 628.]

3. **Appeal and Error (§ 1001 (1)*)—Scope of Review—Conclusiveness of Verdict.**—In action for injuries against city, where the evidence warranted findings that the city was guilty of negligent breach of duty, a verdict for the plaintiff was conclusive.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 622.]

4. **Bridges (§ 46 (6)*)—Injury to Pedestrian—Proximate Cause—Evidence.**—In action against municipal corporation for injury when plaintiff walked off bridge having no handrail, evidence held to show that the city's negligence in providing no handrail was the proximate cause of the injury, assuming plaintiff was not negligent.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 628.]

5. **Bridges (§ 46 (6)*)—Injuries to Pedestrian—Contributory Negligence—Evidence.**—In pedestrian's action for injuries when in the nighttime he fell from bridge having no handrail, evidence held not to establish contributory negligence.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 628.]

6. **Bridges (§ 46 (13)*)—Injury to Pedestrian—Instructions.**—In pedestrian's action for injuries when he fell from bridge having no handrail, instruction that the city was bound to use reasonable care to keep the bridge in good repair, and that if it "failed to use all reasonable care" it was liable, was not vicious as imposing too high a degree of care by the use of the word "all."

[Ed. Note.—For other cases, see 16 Va.-W. Va. Enc. Dig. 952.]

7. **Trial (§ 296 (3)*)—Instructions—Defects Cured by Other Instructions.**—In pedestrian's action for injuries by falling from bridge which had no handrail, instruction that want of a rail was a defect for which the city was liable, if the rail was necessary, was not er-

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

roneous as imposing the absolute duty to maintain a safe way, where other instructions properly stated the city's duty.

[Ed. Note.—For other cases, see 14 Va.-W. Va. Enc. Dig. 978.]

8. Trial (§ 296 (11*))—Instructions—Prospective Damages.—In action for injury to pedestrian, who fell from an unguarded bridge in the nighttime, instruction that he could recover prospective damages, not exceeding the amount claimed in the declaration, was not erroneous for failure to define the scope of the jury's inquiry in ascertaining prospective damages, in view of further instruction that the jury could consider bodily injuries and physical pain, past or future.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 929.]

9. Trial (§ 260 (8*))—Instructions—Contributory Negligence.—In pedestrian's action for injuries, where the court gave specific instructions based upon the evidence of contributory negligence, stating that such negligence would bar recovery, refusal of an instruction that, if plaintiff's evidence disclosed contributory negligence, he could not recover, and giving a modified instruction as to the burden of proving contributory negligence, held not erroneous.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 714.]

10. Bridges (§ 46 (13*))—Actions for Injuries—Instructions.—In pedestrian's action for injuries when he fell from bridge having no handrail, the question, whether he knew of the absence of the rail being at issue, defendant's instruction that if the danger was obvious plaintiff was bound to guard against injury was properly modified by the clause "if he knew of the absence of the rail."

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 412.]

11. Trial (§ 252 (8*))—Instructions—Applicability to Evidence.—In action for injuries to pedestrian, who fell from bridge having no handrail, instruction on care required of an aged man, whose faculties were impaired, was properly refused, where there was no evidence that plaintiff's faculties were impaired through age.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 718.]

12. Trial (§§ 194 (16), 244 (4*))—Instructions—Weight of Evidence.—In pedestrian's action for injuries when he fell from an unguarded bridge, requested instruction as to the care required of an aged person, whose faculties were impaired, held properly refused as on the weight of the evidence, and as emphasizing a single circumstance.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 718.]

13. Negligence (§ 69*)—Knowledge of Dangers—Forgetfulness.—Inattention to or forgetfulness of a well-known danger will not excuse failure to avoid it.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 917.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

14. Trial (§ 253 (9)*)—Instructions—Ignoring Evidence—Contributory Negligence.—In pedestrian's action for injuries when he fell from bridge in the nighttime because of absence of guardrail, requested instruction that if plaintiff knew there was no rail, and fell through inattention, he could not recover, held properly refused, in view of testimony of plaintiff as to surrounding circumstances which distracted his attention.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 412.]

Error to Corporation Court of Charlottesville.

Action by J. R. Jones against the City of Charlottesville. Judgment for plaintiff, and defendant brings error. Affirmed.

Duke & Duke, of Charlottesville, for plaintiff in error.

Allen & Walsh, of Charlottesville, for defendant in error.

MANOR et al. v. HINDMAN.

Nov. 14, 1918.

[97 S. E. 332.]

1. Sales (§ 54*)—Contract—Construction by Parties.—The construction put by the parties themselves upon a contract for the manufacture and sale of goods to be shipped under directions to third parties will be accepted by the courts, where it does no violence to the language used.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 8, 10; 14 Va.-W. Va. Enc. Dig. 910.]

2. Sales (§ 81 (1)*)—Delivery—Reasonable Time.—Under a contract for the manufacture and sale of flour to be delivered in installments to third parties under shipping directions, the manufacturer will be allowed a reasonable time in which to make delivery of the flour but not for its manufacture; it being his duty to have the flour ready for delivery whenever called for.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 24, 25; 14 Va.-W. Va. Enc. Dig. 912.]

3. Partnership (§ 9 (2)*)—What Constitutes—Share of Profits.—Clerks who are paid salaries, and in addition are allowed a share of the profits of the business, but are not liable for losses in any event, are not copartners of their employer.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 832; 16 Va.-W. Va. Enc. Dig. 1039.]

4. Sales (§ 418 (12)*)—Breach of Contract—Goods Manufactured for Resale.—Where the seller of goods has knowledge that the goods are being purchased for resale in a particular market, or under par-

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.